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*Attorneys for Plaintiffs Capana Swiss Advisors AG and
AmeriMark Automotive AG, and Third-Party Defendants
Shaen Bernhardt, Martin Fasser Heeg, and Stefan Kammerlander*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK AUTOMOTIVE
AG, a Swiss corporation,

Plaintiffs,

v.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**DECLARATION OF SARAH E.
DIAMOND IN SUPPORT OF
AMERIMARK GROUP AG'S
MOTION TO DISMISS FOR
INSUFFICIENT SERVICE
PURSUANT TO RULE 12(B)(5) OF
THE FEDERAL RULES OF CIVIL
PROCEDURE**

Civil Case No. 2:23-cv-00467
Judge: Hon. Ted Stewart
Magistrate Judge: Hon. Cecilia M. Romero

DECLARATION OF SARAH E. DIAMOND

I, Sarah E. Diamond, declare as follows:

1. I am an attorney in the law firm of Venable, LLP, and I am admitted *pro hac vice* in this Court. I am among the counsel of record for Plaintiffs Capana Swiss Advisors, AG, and AmeriMark Automotive AG, and Third-Party Defendants Shaen Bernhardt, Martin Fasser Heeg, Stefan Kammerlander, and, for the limited purpose of the present Motion to Dismiss for Insufficient Service (“Motion”), AmeriMark Group AG (“AmeriMark Group”) (collectively, “Plaintiffs”) in the above-referenced litigation. This declaration is submitted in support of AmeriMark Group’s Motion. I have personal knowledge of the facts set forth in this declaration. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

2. On September 3, 2024, Defendants Rymark, Inc., Nicholas Thayne Markosian, Vicky Small, and John Kirkland (collectively “Defendants”) were granted leave to file an Amended Counterclaim and Third-Party Complaint (ECF No. 137).

3. On September 3, 2024, Defendants filed their Third-Party Complaint (ECF No. 139) which, pending service, added AmeriMark Group, a Swiss corporation, as a Third-Party Defendant.

4. At the deposition of Martin Fasser Heeg in Salt Lake City, Utah on November 26, 2024, Defendants attempted to serve AmeriMark Group by providing summons to John S. Worden, counsel for Plaintiffs, and Martin Fasser Heeg.

5. Mr. Worden is counsel for the following parties in the above-captioned case: Capana Swiss Advisors AG, AmeriMark Automotive AG, Shaen Bernhardt, Martin Fasser Heeg,

and Stefan Kammerlander. He is not counsel for AmeriMark Group AG, and therefore is not authorized to accept service on its behalf.

6. John Worden objected at the commencement of the Heeg deposition stating that: “neither he nor Mr. Heeg were authorized to accept service on behalf of AmeriMark Group.” Attached hereto as **Exhibit 1** is a true and correct copy the relevant excerpt from the November 26, 2024 deposition of Mr. Heeg.

7. Mr. Heeg is Chairman of the Board for Plaintiff AmeriMark Automotive AG. He has no role at AmeriMark Group, and therefore is not authorized to accept service on its behalf.

8. On December 10, 2024, Defendants filed their returned summons as to AmeriMark Group (ECF No. 186) purporting to have effectuated service on AmeriMark Group. Plaintiffs are unaware of any other attempts to serve AmeriMark Group.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 2nd day of January, 2025.

/s/ Sarah Diamond
Sarah Diamond

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2025, I filed the foregoing was filed with the Clerk of Court using the Court's CM/ECF filing system and which sent electronic notification of the filing to counsel of record in this matter.

/s/ Hannah Ector
Hannah Ector